

Dear FCC,

In what follows, and unless otherwise stated, "NOTICE "means
"NOTICE OF PROPOSED RULEMAKING: FCC 02-249"]

INTRODUCTION

** I have composed the following comments in my capacity as a broadcast listener who is simultaneously a broadcast owner and an occasional broadcaster.

** I have nothing to say on TV ownership in principle except as a reflection of audio (radio) broadcasting ownership policies. TV broadcasting differs substantially from radio broadcasting because of the availability of cable TV -- which is not considered to be "broadcasting" in this proceeding . [NOTICE: footnote 3]

** I am NOT directly concerned with how the FCC chooses to regulate the ownership of commercial radio stations except to the extent that limited spectrum availability causes FCC ownership policies to impinge and to affect the provision of licenses for educational broadcasting and will thereby affect the public's interest in such broadcasting.

** I am especially concerned to have the FCC recognize both the public interest and the First Amendment's mandate that the views of listeners are paramount WHENEVER they combine to form a member-controlled non-commercial educational organization owned and controlled by listener-members for the purpose of promoting and operating a radio broadcasting station.

** I am concerned to comment because of the FCC's apparent interest in grounding its ownership rules "in the current realities of the media marketplace". [NOTICE: Par. 4] This phrase means that the FCC aims to eliminate radio listeners from the development and enforcement of its ownership policies.

Together with the stated intent to review its

"policy objectives in light of the current media marketplace and determine whether Commission intervention is necessary to achieve these objectives [and to] consider whether there are additional objectives that the Commission should strive to achieve through our media ownership rules", [NOTICE: Par. 5] the appearance of reasonableness completely vanishes where the FCC also wishes to look at marketing philosophy and then only if "... the market alone does not satisfy the Commission's goal(s) ... " will the FCC "consider the appropriate regulatory framework for achieving (them) ". [NOTICE: Par. 44]

Admittedly this quote refers only to the single goal of "viewpoint diversity", but as the FCC strives to promote the public interest, and where it has traditionally focussed on " advancing three broadly defined goals: (1) diversity, (2) competition, and (3) localism " [NOTICE: Par. 5], the FCC would also lose the appearance of reason if it wishes to rely on the market to satisfy all "diversity" goals and all "localism " goals, without recognizing the public interest in a regulatory framework created outside the market. And the FCC's goal as to competition seems totally inappropriate in face of the statutory requirement providing for educational broadcasting.

** My comments are expressly aimed at bringing FCC attention to the class of member-controlled educational FM radio stations owned and controlled by listener-members.

COMMENT A:

My concern is that the FCC's attitude towards media ownership leaves out any concern for the listener. The FCC states that " (o)ver 13,260 radio stations are currently on the air (4,811 AM, 6,147 commercial FM and 2,303 educational FM). [NOTICE: Par. 26] . The majority of these stations are commercial and have no direct financial interest in listener interaction, or, more accurately stated, listeners find it easier and effective to interact with radio advertisers than with station staff or station owners.

This seems obvious in the case of commercial stations. The listener is free to surf the radio spectrum in search of something to her/his taste. If something objectionable is broadcast, the complaining listener has more success at influencing the station by approaching those who pay for commercials than by approaching the station staff, management or owners. It's a matter of financial leverage: commercial listeners' only leverage as to broadcast content derives from audience demographics and survey ratings.

But something similar applies to many of the non-commercial educational stations. In most cases the firewall which exists between the listeners on the one hand and station staff, programmers and owners on the other makes it hard for listeners to exercise leverage over program content or over station policies. Their only power beyond their ability to change channels lies in their ability to refuse to support station appeals for committed financial support.

The very structure of the FCC works against individual listener involvement in broadcast station ownership, licensing and regulatory matters.

Owners apply for and are thereafter granted or denied licenses, licensees are supervised under FCC regulations and have standing to question FCC decisions as to them. Listeners have no right to join administrative hearings between the FCC and individual licensees or individual applicants for broadcast licenses; indeed the only FCC forum available for individuals to speak to the public interest is in proceedings - like this one - where the FCC is preparing an itself for an administrative rule-making proceeding,

The FCC accepts the public's role by limiting participation of the listening public to writing letters to the Complaints Division of the Commission. Any person dissatisfied with some aspect of broadcasting by individual owners can complain to the FCC, but they have no subsequent part to play in how the FCC chooses to act on a complaint. There seems to be no private right of action in such matters, and the FCC appears to oppose any attempt by the public to act in the role of private attorneys general. See e.g. UCC v FCC 359 F2d 994 (DC Circ, 1965)

COMMENT B:

It appears from the FCC's regulations that the grant of a broadcast license does not depend on how the licensed station is financed or controlled: Sec. 73.503 Licensing requirements and service. states:

The operation of, and the service furnished by non-commercial educational FM broadcast stations shall be governed by the following:

- (a) A non-commercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon

showing that the station will be used for the advancement of an educational program.

There is an important question about the FCC's ownership goals and policies as they apply to any nonprofit organization which is member-listener-owned and member-listener-controlled and which also aims to use a station for the advancement of an educational program. There has, as yet, been no court decision to provide guidance; specifically none of the several FCC decisions involving the Pacifica Foundation are of any assistance because that organization is neither listener-owned nor listener-controlled.

One point of these comments is to attempt a concise showing that such organizations actually exist under current FCC policies and guidelines. Also that such organizations are in uncharted territory as regards the applicability of the First Amendment and that they are also in a different territory from commercial stations and from non-listener controlled educational stations as regards the applicability of market ideas and of audience demographics.

COMMENT C:

I am a listener, a volunteer worker and occasional broadcaster at FM station KBOO, which broadcasts from Portland, Oregon.

Either because I pay annual membership dues of at least \$40 or because I have volunteered at least 24 hours service during the past twelve months I am a member of a nonprofit public benefit corporation, which is organized under Oregon statutes and is operated exclusively for charitable, scientific, literary, and educational purposes and whose primary purpose is the promotion and operation of a listener-supported, non-commercial, community radio broadcasting station.

The members, currently in excess of 6000, collectively own the station through an elected board of recallable directors and collectively set station policies through the power to approve, amend or repeal the organizational bylaws. The majority of the broadcast material is produced by local listener-member-volunteer- owners. [It's my subjective impression that there is less than one hour of externally produced material broadcast in any 24 hour period.]

The station's aims its programming towards diverse communities and to groups otherwise unserved or underserved by the media. The station interacts with it's member-listener owners. It knows who they are; indeed it does not depend on audience demographics to guess at what its member-listener owners wish to broadcast or to hear broadcast.

It does NOT rely on Arbitron to inform as to what works; it has NO advertisers; it does not rent soapboxes for the promotion of political candidates or of businesses.

The member-listener owners all have access to the station and to its broadcast facilities. For as little as \$40 or 24 hours of volunteer work they can - and do - address an audience. This is more of an audience than can be reached from a soapbox or than can be reached by forty dollars worth of printed pamphlets.

COMMENT D:

The main purpose of a commercial station is to provide a platform which commercial organizations and political candidates will pay to use in

promotional broadcasting, and thereby to make money. That the platform is used for broadcasting speech protected by the First Amendment is incidental to the marketing process. Although the same is true for the publication of newspapers, the public does not pay to hear the output of commercial broadcasters. The stations' appeal to listeners is for their attention and not for their money.

Newspapers certainly provide a platform, but the marketing of newspapers also involves determining what the public will pay to receive a printed copy, and the content of newspapers reflects that determination. Printed newspapers are more visibly controlled by market forces than are commercial radio stations. And although both commercial broadcasters and newspaper publishers share the First Amendment protections available to those who "own a press" the FCC and the courts have recognized where the newspaper owner makes application to own a broadcasting station, under the First Amendment that application is subject to ".....the rational-basis test used for evaluating broadcast regulations" [NOTICE: Par. 22] rather than to the strict scrutiny test applicable to newspaper content.

But the FCC has withdrawn from the strict application of marketing principles to license allocation. A move to auction FM spectrum to the highest bidder was modified because nothing in the FCC's statutory authority authorizes the FCC to charge educational organizations for a broadcast license. It is surely within the Congressional power to create this "educational" exception as a matter of public policy, one in the interest of the public.

I am requesting the FCC to make a further exception as a matter of public policy. There needs to be a complete revision of the FCC regulations governing any member-listener-owned and member-listener-controlled nonprofit organization having the purpose of advancing an educational program.

This is not just because such stations operate completely outside the market, not just because they have an educational purpose, it is because they represent a coming together of individuals wishing to exercise their First Amendment right to speak, write or publish. This is a where the member-listeners, whose First Amendment rights are paramount -- FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 475 (1940) -- are also broadcasters who don't lose their First Amendment rights merely by entering a studio to speak into a microphone. Also to this point, the identity between member-listeners and broadcasters means the station standards are those of their community of member-listeners.

In one particular area - that of defining community standards for the broadcast medium - the FCC constructs the idea of the average broadcast listener; [See FCC Policy Statement re: Enforcement Policies Regarding Broadcast Indecency Adopted: March 14, 2001] this allows the FCC to proceed to define standards by introspection, without any reference to the public.

CONCLUSION

The public's interest lies in the fostering of a class of listener-owned and listener-controlled educational stations.

I'm asking the FCC to accept the principle that this class already exists and merits special consideration both in the public interest and under the First amendment,

I urge changing ownership rules in order foster such stations and to protect their translators from being "bumped". Current regulations allow for bumping an established translator when a full power station is granted a "minor change" resulting in an increase in its "protected" coverage to include the translator's area of service. The resulting conflict is between member-listener-owners' choice to exercise their First Amendment rights by the construction and a broadcast owner who aims to increase listener base in order to attract advertising revenue.

Respectfully submitted
Michael Papadopoulos Ph.D.

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